

REMARKS

During a telephonic interview with the Examiner conducted on October 10 and 13, 2003, the Examiner advised applicants' attorney that claim 4 contains allowable subject matter and that the application would be allowed if claim 1 were amended to incorporate the subject matter of dependent claim 4. Although applicants' attorney questioned whether independent claims 11, 12 and 25 were deemed to be in allowable form without a similar amendment, the Examiner was not able to provide a response prior to the October 18, 2003 deadline for taking further action.

Accordingly, applicants have filed this second amendment after final for the purpose of amending claim 1 to incorporate the subject matter of dependent claim 4 as suggested by the Examiner, and to amend claim 25 to incorporate the subject matter of dependent claim 26. Amended independent claims 1 and 25 contains similar limitations and are believed to be allowable for the same reasons.

In view of the foregoing amendments, claims 4 and 26 have been canceled without prejudice or admission, claim 24 has been amended to change the dependency thereof from canceled claim 4 to amended claim 1, and claim 27 has been amended to change the dependency thereof from canceled claim 26 to amended claim 25.

No amendment to independent claims 11 and 12 is believed necessary since both of independent claims 11 and 12 already recite that the scanning control means controls the device such that the rate of change over time of the relative position and displacement of the probe with respect to the sample in the direction of one of the scanning axes becomes constant (claim 11) or becomes a set value (claim 12) until the probe enters a range being observed. Accordingly, claims 11 and 12 are believed to be in allowable form for the same reasons as claims 1 and 25.

Entry of the foregoing amendments is most respectfully requested since the amendments were made at the suggestion of the Examiner and do not raise any new issues or require further consideration. The amendments merely consist of the incorporation of the subject matter of dependent claims 4 and 26 into independent claims 1 and 25, respectively, and revising the dependency of dependent claim 24 to conform therewith.

Based on the foregoing amendments, claims 1, 2, 5-12, 14-25, 27, 28 and 34-36 remain pending. Applicants respectfully submit that the pending claims patentably distinguish over the prior art of record.

Amended independent claims 1 and 25 and independent claims 11 and 12 recite a scanning probe microscope having a

displacement detector and scanning control means for controlling the velocity of a scanner in order to obtain an image of a sample. The scanning control means receives a feedback signal and performs feedback control by controlling the position of a probe in accordance therewith such that the relative position or displacement of the probe with respect to the sample in the direction of a scanning axis becomes constant during either an entire period or a portion of a period of scanning in the direction of another scanning axis.

No corresponding structure is disclosed or suggested by the prior art of record.

Miyamoto discloses an SPM having a displacement detection unit that detects displacement of a piezoelectric unit along a scan line and a matching detection unit for outputting a coincidence detection signal for maintaining such displacement at a target value. However, Miyamoto does not disclose or suggest control of velocity or rate of change of displacement of the piezoelectric unit in the manner required by independent claims 1, 11, 12 and 25.

Anticipation requires the disclosure, by a single reference, of all subject matter recited in a rejected claim. Absent disclosure of a scanning control unit for controlling velocity or rate of change of displacement of a scanning unit as required by the independent claims, anticipation cannot be found.

For the foregoing reason, applicants respectfully submit that pending claims 1, 2, 5-12, 14-25, 27, 28 and 34-36 patentably distinguish over the prior art of record and that the claim rejections under 35 U.S.C. §102(b) should be withdrawn.

In view of the foregoing amendments and discussion, the application is now believed to be in allowable form. Accordingly, entry of the present amendment together with favorable reconsideration and allowance of the claims are most respectfully requested.

Respectfully submitted,
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